

No. 82-1318.

Office Supreme Court, U.S.

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In the  
Supreme Court of the United States.

OCTOBER TERM, 1982.

RALPH DEMASI AND LAWRENCE M. LANOUÉ,  
PETITIONERS,

v.

STATE OF RHODE ISLAND,  
RESPONDENT.

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE SUPREME COURT  
OF THE STATE OF RHODE ISLAND.

Brief of Respondent.

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### **Question Presented.**

**Whether the stop of petitioner's vehicle was justified where a police officer with seven years experience observed the car driving through the side streets of a heavily industrialized area of the city at 4 A.M. with its trunk so heavily laden that sparks were emitted from the impact of its back end scraping the railroad tracks over which it traveled, where the passenger in the rear seat continued to peer backwards at the pursuing patrol car and where the officer believed that the car was attempting to elude him?**

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No. 82-1318.

**In the  
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OCTOBER TERM, 1982.

**RALPH DEMASI AND LAWRENCE M. LANOUE,  
PETITIONERS,**

**v.**

**STATE OF RHODE ISLAND,  
RESPONDENT.**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF RHODE ISLAND.**

**Brief of Respondent.**

**Prior Proceedings.**

The respondent substantially agrees with petitioner's account of the prior proceedings in this case<sup>1</sup> as set forth in his petition for writ of certiorari.

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<sup>1</sup> In the interest of clarity and consistency, *State v. DeMasi and Lanoue*, \_\_\_\_ R.I. \_\_\_\_, 419 A.2d 285 (1980) is referred to throughout as *Lanoue I*, while *State v. DeMasi and Lanoue*, \_\_\_\_ R.I. \_\_\_\_, 448 A.2d 1210 (1982) is referred to as *Lanoue II*.

### **Factual Background.**

On October 8, 1974, at approximately 4:10 A.M., Officer Thomas Calabro of the Pawtucket Police Department was traveling east on Division Street in an industrial area of the city when he observed three men in a 1968 Mercury driving south on Industrial Highway near its intersection with Division Street, and crossing over some railroad tracks. Officer Calabro noticed that the rear end of the Mercury was heavily loaded and testified that, "It went over the railroad tracks, sending sparks in the air at that time." As the car crossed the tracks, the passenger in the backseat looked back at the patrol car. Officer Calabro became suspicious and attempted to follow the car as it proceeded to the end of Division Street and turned right onto York Avenue. Officer Calabro testified that he waited for a truck to pass, proceeded to York Avenue, and went down to Burgess Avenue, but,

[t]he vehicle had vanished. I couldn't find it . . . . I took the first left off York Avenue, went down to Burgess Street, and it just happened that their vehicle came out two streets . . . farther south than mine, but running parallel with me. . . . At that time, they took a right and I took a right, and they took a left. I also took a left, and we proceeded now toward Newport Avenue.

*State v. DeMasi*, \_\_\_\_ R.I. \_\_\_\_, 419 A.2d at 296.

The passenger in the rear seat continued to turn around and look back at Officer Calabro during this time. It appeared that the driver was attempting to elude him.

When he temporarily lost sight of the car, Officer Calabro radioed Officer Raymond Zwolenski, another Pawtucket police officer in the area, that he wanted the car stopped. Both



patrol cars approached the Mercury, turned on their flashing lights, indicated to the car to stop, and the driver pulled over. Both officers approached the stopped vehicle, Calabro on the passenger's side and Zwolenski on the driver's side. Upon request, Lanoue produced a valid operator's license and registration certificate. The officers also asked the two passengers, DeMasi and Edward Sitko, for identification. Respondent DeMasi identified himself as "Raymond Massey," gave his date of birth, but could produce no identification.<sup>3</sup> Sitko produced a Massachusetts driver's license issued to "Robert Reilly." The officers radioed the station and requested a National Crime Information Center (N.C.I.C.) check on all three names. A few minutes elapsed and the station reported that there was an outstanding Massachusetts arrest warrant for Lanoue. He was arrested at the scene.<sup>3</sup>

The officers radioed for a cruiser to transport Lanoue and DeMasi to the station. Sitko followed the two police vehicles in the Mercury to the station.

About two hours later, the Pawtucket police learned that a burglary had occurred during the night at the Regina Manufacturing Company, and that approximately 500 pounds of gold and silver were missing.<sup>4</sup> At about 9:30 A.M., a judicial magistrate issued a warrant to search the automobile based on an affidavit authorized by Lt. Norman J. Moreau of the Pawtucket Police Detective Division. When the police officers pried open the trunk of the Mercury, they discovered approximately 500 pounds of gold and silver jewelry findings later

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<sup>3</sup>When a cruiser arrived to transport the trio to the station, one of its officers, Daniel Haynes, identified Ralph DeMasi, who was known to him as a safecracker with an extensive criminal record.

<sup>3</sup>The record indicates that DeMasi was arrested later at police headquarters after further investigation.

<sup>4</sup>Regina Manufacturing Company is a manufacturer of jewelry located approximately two miles from the location where the Mercury was stopped.

identified as having been stolen from Regina Manufacturing Company earlier that morning.

### **Reasons for Denying the Writ.**

#### **I. THE STOP OF PETITIONER'S VEHICLE WAS REASONABLE UNDER THE FOURTH AMENDMENT.**

##### **A. *Investigatory Stops Must be Based on a Particularized Suspicion of Criminal Activity Based on All the Circumstances Including the Perceptions of Trained Police Officers.***

The Fourth Amendment does not bar all searches and seizures, only those considered unreasonable. *Elkins v. United States*, 364 U.S. 206 (1960). Therefore, investigatory stops based on reasonable suspicion that criminal activity is afoot are not proscribed by the Fourth Amendment. *Terry v. Ohio*, 392 U.S. 1 (1968). In order to justify such a stop, however, "a police officer must be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21. This test was postulated in such cases as *Terry v. Ohio*, *supra*, and *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) as a means of balancing the justifiable governmental interest in crime prevention and detection with the right of the individual to be free from unwarranted police intrusion. The *Terry* rationale has been applied to vehicular stops based on less than probable cause, where police officers' assessment of the entire circumstances yields a particularized suspicion of wrongdoing. *United States v. Cortez*, 449 U.S. 411 (1981). Moreover, *Cortez* mandates that the review of factors leading to an officer's reasonable suspicion be analyzed in light of his



experience and training in law enforcement. *Id.* at 418. Thus, this Court, when describing the elements to be assessed in any determination regarding the reasonableness of a stop, has emphasized that facts which may appear innocuous to the untrained observer can portend criminal activity to a professional law enforcement agent. *United States v. Cortez, supra* at 418.

By far the most common type of situation in which a stop on the street for investigation occurs is that in which police officers on patrol observe conduct which they conclude is suspicious. This practice of "field investigation," as it is termed by the police, is viewed by police administrators as a vital aspect of the work of police officers assigned to foot and vehicular patrols.<sup>5</sup> Although the variety of observed circumstances which might lead to a stop makes it difficult to articulate precisely what situations are sufficiently suspicious to justify a stop, the specialized expertise of the police officer cannot be ignored in determining its propriety.

It is in this context that the Rhode Island Supreme Court reconsidered its decision (*Lanoue I*) and properly held that the stop of Lanoue's car, on October 8, 1974 was justified by the totality of the circumstances. *State v. DeMasi and Lanoue*, \_\_\_\_ R.I. \_\_\_\_, 448 A.2d 1210, 1213 (1982) (*Lanoue II*).

***B. The Stop of Petitioner's Vehicle was Based on the Reasonable Suspicion of an Experienced Police Officer.***

From all the facts available, the inferences drawn and deductions made by Officer Calabro, a trained police officer with seven years experience in law enforcement, yielded a rea-

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<sup>5</sup> See, e.g., the memorandum by the Superintendent of the Chicago Police Department, quoted in L. Tiffany, D. McIntyre and D. Rotenberg, *Detection of Crime* (1967) at 16.

sonable suspicion that the occupants of Mr. Lanoue's automobile were engaged in criminal activity.

These pertinent facts can be set forth as follows: Officer Calabro, while patrolling a heavily industrialized area in the city of Pawtucket, Rhode Island, noticed a 1968 Mercury occupied by three men. The automobile was riding very low in the rear, and swaying back and forth as it turned corners. It was 4 A.M., a time when legitimate traffic in such an area would be minimal. He followed the car through several side streets, losing sight of it at one point.

[t]he vehicle had vanished. I couldn't find it . . . . I took the first left off York Avenue, went down to Burgess Street, and it just happened that their vehicle came out two streets . . . farther south than mine, but running parallel with me. . . . At that time they took a right and I took a right and they took a left. I also took a left, and we proceeded now toward Newport Avenue.

It appeared to Officer Calabro that the Mercury was trying to elude him. (See petitioner's brief at 6.) As the car proceeded through the deserted streets, the passenger in the rear seat turned around continuously, keeping the police cruiser under surveillance. As the car crossed a set of railroad tracks, sparks flew into the air from the impact of the rear of the car banging the tracks. In consideration of all these objective facts, under the totality of the circumstances test, and as viewed through the eyes of a veteran police officer, the stop of Lanoue's vehicle was amply justified.

The Rhode Island Supreme Court, in *Lanoue I*, totally overlooked some of the objective facts upon which Officer Calabro made his decision to stop the car.

Officer Calabro's decision to radio for assistance and to stop the vehicle was apparently based solely on the fact that at the time he first spotted the Mercury, the back of the car was overweighted and it struck the railroad tracks. An overweighted appearance may result from other normally innocent causes, such as a suspension system in need of repair.

*State v. DeMasi and Lanoue*, \_\_\_\_ R.I. \_\_\_\_, 419 A.2d 285 at 291 (1980) (*Lanoue I*).

Clearly, this is not the only specific and articulable fact that entered into Officer Calabro's assessment of the situation.

The record of this case bears out the contention that a confluence of factors motivated this stop. Moreover, *Lanoue I* wholly ignores the legitimate probabilities and conclusions that emerge as these factors are evaluated by a trained police officer. *Cortez* specifies that "evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but, as understood by those versed in Law enforcement" *United States v. Cortez*, *supra* at 418. Taking all the observations and inferences available to Officer Calabro during those early morning hours, any reasonably prudent police officer would have suspected that the trio in the Mercury was leaving with property after burglarizing one of the many manufacturing plants located in this industrial area.

Although the petitioner would like this court to believe that the detention of Lanoue's vehicle was little more than a random stop, the indices of criminal behavior apparent to Officer Calabro (and subsequently confirmed pursuant to a valid search warrant) distinguished this stop from those prohibited by the Fourth Amendment. Cf., *Delaware v. Prouse*, 440 U.S. 653 (1979); *United States v. Briganti-Ponce*, 422 U.S. 873 (1975).

**C. The Police Officer Thought the Mercury was Trying to Elude Him.**

Pursuant to this court's mandate to reconsider this case in light of *United States v. Cortez*, *supra*, the Rhode Island Supreme Court took another look at the total picture through the eyes of an experienced police officer. The failure to accord any weight to the inferences and deductions of Officer Calabro, a patrolman with seven years experience in these matters, is the crucial deficiency in *Lanoue I*. One of the permissible deductions made by Officer Calabro that morning was that Lanoue's meandering through the deserted sidestreets represented an attempt to elude him. Officer Calabro testified: "I don't know whether he purposely meant to elude me or not. It appeared that way but they did pull over; when we finally put the lights on, the vehicle did pull over." Although the circuitous route of the Mercury may have been innocuous, in and of itself, the accumulation of objective facts<sup>6</sup> observed by Officer Calabro clearly warranted the deduction that the Mercury was attempting to elude him. Whether Lanoue's travel through the sidestreets was actually intended to elude police is irrelevant. Rather, the *Cortez* standard demands only that the inferences drawn by trained police officers from objective facts be reasonable and fairly bespeak the presence of criminal activity. Thus, in reconsidering the totality of the circumstances, the Rhode Island Supreme Court in *Lanoue II* properly accorded some deference to the valid observations and inferences made by Officer Calabro. Moreover, in *Lanoue II*, the Rhode Island Supreme Court did not repeat its earlier mistake of looking at the situation with tunnel vision.

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<sup>6</sup>These facts include the presence of a heavily laden car in a highly industrial area in the wee hours of the morning, occupied by three men, one of whom continuously looked back at him.

The totality of the circumstances test demands a more expansive approach than the court took in *Lanoue I*. Indeed, there is no shocking discrepancy between the facts as found in *Lanoue I* and *Lanoue II*. Rather, the *Lanoue II* court properly considered factors that had been summarily and inappropriately disregarded in *Lanoue I*. This reexamination of all factors as they appear to a trained police officer is exactly the result contemplated by this court when it mandated reconsideration in light of *Cortez*. The Rhode Island Supreme Court cannot and should not be faulted for reassessment of the impact of certain objective data in this case, where the analysis is clearly consistent with the principles enunciated in *Cortez*.

#### *D. The Rhode Island Supreme Court Properly Applied the Cortez Standard.*

The petitioner, in his desperate effort to distinguish *Cortez* from the case at bar, overlooks its most obvious message. In *Cortez*, this Court affirmed the validity of a police officer's use of all his prior training and experience to piece together clues that may escape the untrained eye, but which to him signal the presence of criminal activity. Indeed, under *Cortez*, the determination of the existence of reasonable suspicion cannot be made in a vacuum.

A pragmatic analysis from the vantage point of a seasoned patrol officer may include a number of factors. Among the factors which may contribute to a reasonable suspicion are: the location in which the conduct occurred, *United States v. Magda*, 547 F.2d 756, 768 (2d Cir. 1976); *cert. denied*, 434 U.S. 878 (1977); the time at which the incident occurred, *United States v. Constantine*, 567 F.2d 266, 267 (4th Cir. 1977) (*per curiam*) *cert. denied*, 435 U.S. 928 (1978); the suspicious conduct or unusual appearance of the suspect, *United States v. Purry*, 545 F.2d 217, 220 (D.C. Cir. 1976);



and the knowledge, training and experience of the police officer, *Terry v. Ohio*, *supra*; *United States v. Cortez*, *supra*.

In *Cortez*, this Court approved a stop by Border Patrol officers which was based largely on a considered appraisal of the above-mentioned factors in light of the officers specialized training. Similarly, in *Lanoue II*, the Rhode Island Supreme Court properly upheld a stop where the time, location,<sup>7</sup> and appearance of the vehicle and conduct of the driver and passenger when assessed by a veteran police officer generated a reasonable suspicion of criminal activity. Thus, the Rhode Island Supreme Court faithfully applied the *Cortez* holding in the case at bar.

### Conclusion.

In *Lanoue II*, the Rhode Island Supreme Court abandoned its myopic view of the facts and circumstances attendant to the stop of Lanoue's vehicle and properly applied principles enunciated in *Cortez*. *Lanoue II* treats these facts and circumstances as a mosaic, viewing them cumulatively through the eyes of an experienced police officer. No other result is con-

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<sup>7</sup> The petitioner states that Calabro had no knowledge of the area. Such a suggestion is ludicrous in the face of Calabro's testimony that he had been a Pawtucket policeman for seven years at the time of the stop.



templated or justified under *Cortex*. Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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